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No. 754.

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Supreme Court of the United States

October Term, 1943.

RUFUS MESHBERGER AND LELIA B. MESHBERGER,
Petitioners,

versus

THE FEDERAL LAND BANK OF LOUISVILLE, KENTUCKY,
Respondent.

REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

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v.

THE FEDERAL LAND BANK OF LOUISVILLE, - *Respondent.*

REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To said Honorable Court:

The statement of the case as set out in petitioners' petition (pages 3-4) and brief (pages 12-17) does not mention some of the material facts and recites erroneous conclusions as to others:

1. The national farm loan association through which the Meshberger loan was made is not a "subsidiary of the respondent." This court has considered the organization, operations and functions of Federal land banks and national farm loan associations and their relationship to each other in—

Smith v. Kansas City Title and Trust Company *et al.*, 255 U. S. 180

Federal Land Bank v. Gaines, 290 U. S. 247

Federal Land Bank v. Priddy, 295 U. S. 229

Knox National Farm Loan Association v. Phillips, 300 U. S. 194

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and held that the associations and banks are distinctly different corporations. The association has never been held to be a "subsidiary" of the Federal land bank.

2. Petitioners state in their brief on page 13 that they "kept the taxes paid on the real estate and paid rental set by the court for more than seven years" and refer to an allegation of their petition to redeem as the evidence of that fact. We have been unable to ascertain whether or not the fixed rental was paid. Assuming that rental has been paid, there is nothing in the record to indicate its amount or that it has been in the sum as fixed by the order of March 21, 1935 (Record, page 18, paragraph 6), it is a great deal less than the earning capacity of the property for the past several years. No part of the rent, nor any other money, has been paid to the respondent by the petitioners or any one on their behalf since 1933. They have continued in their possession of the real estate and have had the benefit of the income from the farm at all times.

3. No reference is made in petitioners' statement of the facts that they recognized the finality of the order fixing the value of the property at $6,000.00 and giving one year in which they could redeem at that value and actually took an appeal from it. It was this order which was affirmed by the appellate court, moreover. As a matter of fact the petitioners' appeal (Record, page 37) was prior in point of time to that of the respondent (Record, page 44); and the only bond executed in connection with the petitioners' or the respondent's appeals was the respondent's cost bond of $250.00 (Record, page 43).

REASONS WHY THE WRIT SHOULD BE DENIED.

1. The May 27, 1941 order of the district court (Record, pages 30-32) was made pursuant to the order of the appellate court in disposing of the petitioners' appeal from the order of June 20, 1940 (see mandate, Record, pages 24-27). This is the "First Appeal" referred to in the footnote on page 14, of petitioners' brief. The order fixed the value at $6,000.00 and gave the petitioners until May 27, 1942 to redeem at that value. The court's direction to have the value and redemption period fixed was in compliance with the provisions of 11 U. S. C. §203 (s) (3), and was authorized by this court's decision in Wright v. Union Central Life Insurance Company, 311 U. S. 273, which was decided December 9, 1940. Mr. Justice Douglas wrote the opinion for the court in that case, stating at page 281 that the farmer

> "Was entitled to have the property reappraised or the value fixed at a hearing; that the value having been determined at a hearing in conformity with his request, he was then entitled to have a reasonable time, fixed by the court, in which to redeem at that value; and that if he did so redeem, the land should be turned over to him free and clear of encumbrances and his discharge granted. Only in case the debtor failed to redeem within a reasonable time would the court be authorized to order a public sale."

Applying the rule in the Wright case to the case at bar we find that the district court fixed the value of the petitioners' land under lien to the respondent at $6,000.00 and gave the petitioners one year from May 27, 1941 to redeem. The petitioners did not take any steps to redeem until (1) the appellate court had held on October 9, 1942

that the one-year redemption period expired May 27, 1942 (Record, page 55), (2) the time for filing petition for rehearing had expired, (3) the mandate had been filed in the district court and (4) the respondent had on November 28, 1942 filed a motion for the appointment of a trustee and an order directing sale of the property (Record, pages 53-59).

In refusing to deposit $6,000.00 in court on or before May 27, 1942 the petitioners failed to comply with the provisions of the order of May 27, 1941. That order became final and binding on the petitioners and the respondent as of the date of its entry upon the dismissal of the petitioners' appeal and affirmance of the respondent's appeal. Meshberger v. Federal Land Bank of Louisville and Federal Land Bank of Louisville v. Meshberger, 131 F. (2d) 287 (Record, pages 55-58). The petitioners did not attempt any review or appeal of the appellate court's decision.

2. The petitioners—in making an effort to justify their non-redemption on or before May 27, 1942—contend that the respondent's appeal suspended the running of the one-year redemption period from May 27, 1941, and the year of redemption did not start to run until October 9, 1942.

Bronson v. LaCrosse R. R. Co., 1 Wall. 405, 68 U. S. 405, decided in 1864, does not support their contentions. The principal question in that case was one concerning the construction and application of the Federal statutes of July 15, 1862 and March 3, 1863 regarding the powers of circuit and district courts. This court held that the former Act deprived the district court of further jurisdiction which the second Act did not restore. As shown by Mr. Justice Catron, the rest of the opinion is *obiter dicta* It is true that certain bondholders, pending an appeal by

them from a judgment decreeing foreclosure of the mortgage securing their bonds, were said by Mr. Justice Nelson not to be entitled to execution of the decree in their favor pending appeal. But this statement has no bearing on the position of the petitioners in this case. They were the successful parties under the district court's order of May 27, 1941 affirmed by the appellate court. They were allowed to redeem the mortgaged real estate within one year at $6,000.00 (an amount (a) considerably less than respondent's proven debt and (b) considerably less than the value of the security contended for by the respondent and supported by the evidence offered in its behalf). The respondent resisted this judgment adverse to it but did not supersede or enjoin its enforcement. Therefore, pending appeal the petitioners, who were the successful parties, could have effected redemption at the fixed valuation of $6,000.00 during the fixed redemption period of one year ending May 27, 1942.

Mr. Justice Nelson fully recognized the settled rule against the contention of the petitioners, stating, at page 410 (68 U. S.):

> ". . . This is not a case where security is to be given in order to supersede the execution. That rule applies in cases where the decree or judgment is against the party appealing, and who desires to suspend the issuing of execution by the adverse party until the appeal is heard and determined. . . ."

It is well settled, as recognized by Mr. Justice Nelson, where a losing party does not supersede a judgment or decree against him, that the successful party in the absence of supersedeas or injunction may enforce the judgment in his favor. The appellate court, in accordance with the authorities, so held in Federal Land Bank of Louis-

ville v. Meshberger, 131 F. (2d) 287. In order to save the question and their contention that the redemption period was suspended pending the appeals the petitioners should have appealed from that decision of the appellate court.

3. In seeking now to invoke the jurisdiction of this court, petitioners admit their dilatory conduct in the prosecution of their cause and their failure to take proper and timely action in the court below, in order to have protected and preserved their redemptive rights under the district court's order of May 17, 1941. In an effort to avoid the logical result of their negligence, they now appeal to this court to grant certiorari notwithstanding, and cite as authority for their plea, this court's decision in the case of Reconstruction Finance Corporation v. Prudence S. Adv. Group, 1941, 311 U. S. 579.

It is respectfully submitted that the decision cited is not authority for petitioners' contention and that the circumstances existing in this case are in no manner analogous to the circumstances that prevailed in that case. Appellants in the cited case, relying on a decision of the Circuit Court of Appeals, endeavored to take appeals by filing, within the appeal period provided by §25 (a) of the Bankruptcy Act, notices of appeal in the district court. No application for leave to appeal was made to the Circuit Court of Appeals. However, the Circuit Court of Appeals took the matter under advisement; and while it was in that court, this court decided Dickinson Industrial Site v. Cowen, 309 U. S. 382, holding allowance of the appeals by the Circuit Court on application to it, necessary. Upon authority of the Dickinson case the Circuit Court of Appeals, on motion of certain respondents, thereupon dismissed the appeals, holding that since appellants did not seek an allowance of their appeals within the time pre-

scribed in §25 (a) (which time had in the interim expired), it had no jurisdiction to allow the appeals. Mr. Justice Douglas, delivering the majority opinion at page 582 said:

> "The procedure followed by petitioners was irregular. *Normally the Circuit Court of Appeals would be wholly justified in treating the mere filing of a notice of appeal in the District Court as insufficient. . . . The court has discretion, where the scope of review is not affected, to disregard such an irregularity in the interests of substantial justice.* . . . In this case the effect of the procedural irregularity was not substantial. The scope of review was not altered. There was *no question of the good faith of petitioners, of dilatory tactics, or of frivolous appeals.* Hence it would be extremely harsh to hold that petitioners were deprived of their right to have the court exercise its discretion on the allowance of their appeals by reason of their erroneous reliance upon the permanency of London v. O'Dougherty (CCA 2d) 102 F (2d) 524, 39 Am. Bankr Rep (NS) 337, *supra.*" (Emphasis ours)

In the concurring opinion Mr. Justice Reed, at page 583, said:

> "I am of opinion that timely application to the Circuit Court of Appeals for leave to appeal is a jurisdictional requirement, and that the practice followed in this case cannot be reduced to a mere procedural irregularity. *However, when petitioners filed their notices of appeal in the District Court the proper procedure was not settled, and petitioners were misled by the decision of the court below in London v. O'Dougherty* (CCA 2d) 102 F (2d) 524, 39 Am Bankr Rep (NS) 337. *In these unique circumstances I think that reversal of the judgment is justified by our broad power to make such disposition of the case as justice requires.*" (Emphasis ours)

In the instant case:

(a) The petitioners failed, during the entire period of redemption fixed, to take any action to redeem the real estate;

(b) The petitioners failed, during the entire period of redemption fixed, to ask for or attempt in any manner to procure a stay or extension of the period of redemption;

(c) The petitioners themselves appealed from the order fixing the valuation and period of redemption, which appeal was not disposed of until October 9, 1942, four months and twelve days after expiration of the period of redemption fixed.

(d) No supersedeas bond was given or injunction entered in connection with respondent's appeal from the order fixing the valuation and period of redemption so as to stay the petitioners' redemptive rights under the order of May 27, 1941.

(e) The petitioners failed to ask this court to review the appellate court's ruling of October 9, 1942 in which it was held that the fixed redemption period expired while the petitioners' and respondent's appeals were pending (Meshberger v. The Federal Land Bank of Louisville and The Federal Land Bank of Louisville v. Meshberger, 131 F. (2d) 287 (Record, pages 57-58).

(f) No petition to redeem was filed by the petitioners until December 8, 1942 (Record, pages 59-62), no petition for an extension of time within which to redeem was filed until January 23, 1943 (Record, page 70), and no payment of the valuation was

made into court until March 17, 1943 (Record, page 94), more than nine months after expiration of the redemption period fixed and more than five months after disposition of the petitioners' and respondent's appeals by the Circuit Court of Appeals.

The instant case is not one where the petitioners' acting with due diligence, in good faith and in reliance upon a recognized mode of procedure, mistakenly adopted an irregular procedure, later held erroneous. The petitioners in this case having failed to take any action to exercise their redemptive rights or apply for an extension of the period of redemption until after their right of redemption expired on May 27, 1942, and having failed to appeal from the October 9, 1942 order of the appellate court, now seek to avoid the consequences of their dilatory conduct through an unjustifiable appeal to the extraordinary powers of this court.

4. The petitioners' petition and brief raises and argues the questions of application on the fixed value of the national farm loan association stock and balance of rent held by the court after payment of taxes. Those questions are not issues unless it is held that the petitioners' right of redemption was in existence at the time they filed petition to redeem on December 8, 1942 (Record, page 59). If entitled to redeem at the time the deposit was made on March 17, 1943 (Record, page 94) we submit that the petitioners' waived application of the claimed credits by paying the fixed value of $6,000.00 into court.

It was not necessary for the appellate court to adjudicate as to the claimed credits for the reason it held that the fixed redemption period expired during the pendency of the petitioners' and the respondent's appeals, and there

was no review asked or appeal taken from the order affirming the respondent's appeal, whereupon the case was back in the district court for appointment of a trustee and entry of order of sale.

CONCLUSION.

The substantive law and rules of procedure laid down by this Court in construing the applicable provision of Section 75 (s) having been complied with by the District Court and its ruling affirmed by the Circuit Court of Appeals, the petitioners having permitted the fixed redemption period to expire before attempting to redeem or obtain an extension of time to do so and their failure to seek review, within the time fixed for that purpose, of the Appellate Court's order adjudicating that the fixed redemption period expired while the former appeals were pending, convince us of the lack of merit in their petition and brief.

WHEREFORE, the respondent prays that the petition for a writ of certiorari be denied.

Respectfully submitted,

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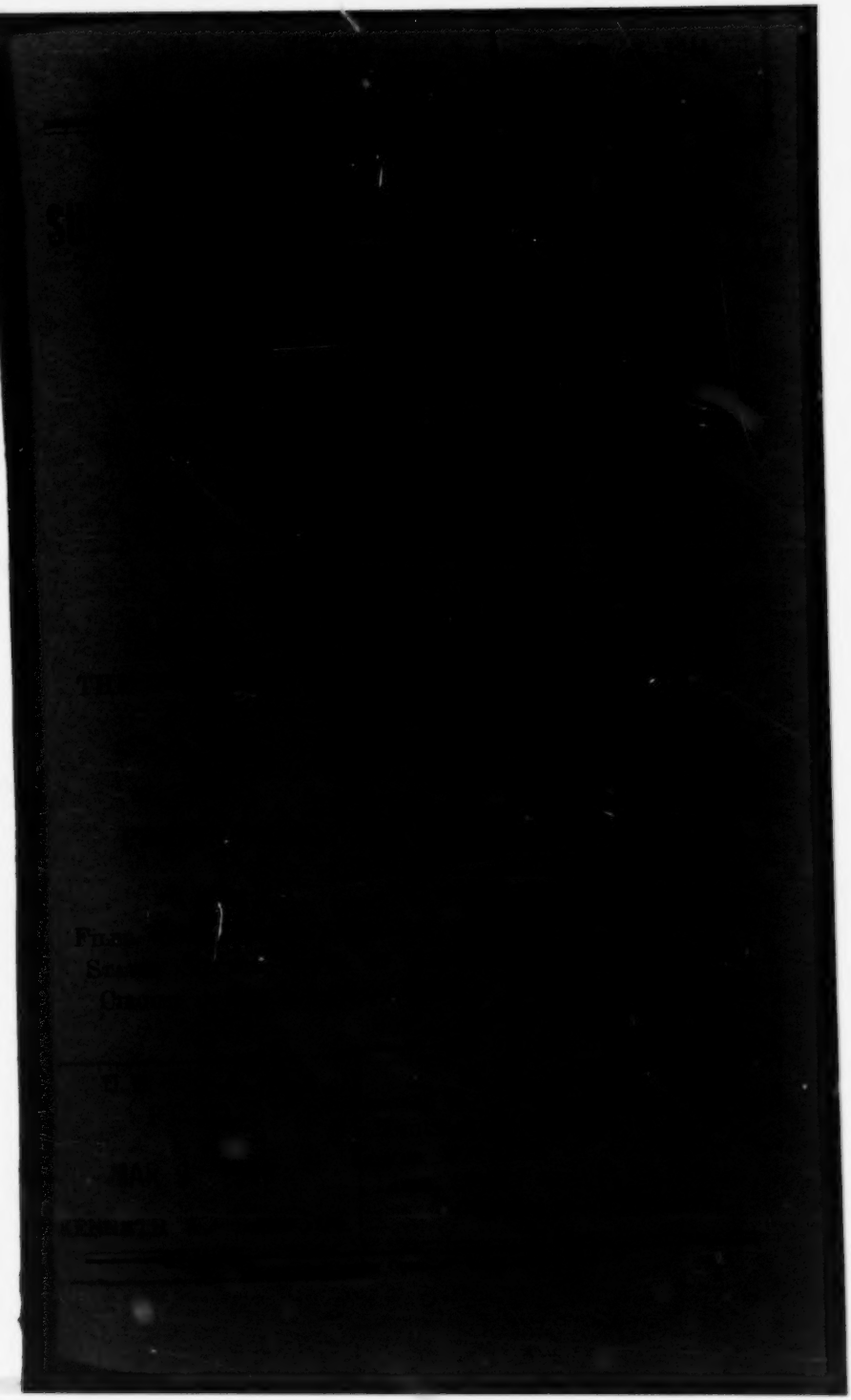
A copy of this reply and brief has been furnished to Elmer McClain, Lima, Ohio, and Samuel E. Cook, Huntington, Indiana, Attorneys for the petitioners, this March 31, 1944.

E. H. ROMER.



IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1943

RUFUS MESHBERGER AND LELIA B. MESHBERGER, Husband and Wife,
Debtors,

vs.

THE FEDERAL LAND BANK OF LOUISVILLE, KENTUCKY,
Respondent.

No. ———

PETITIONERS' ASSIGNMENT OF ERRORS

FILED WITH DEBTORS' PETITION FOR APPEAL FROM UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT TO THE SUPREME COURT OF THE UNITED STATES

DEBTORS' ASSIGNMENT OF ERRORS

(Necessarily there will be some repetition in stating the errors on appeal to the Supreme Court.)

1. Come now the Petitioners in the above entitled cause and file with their petition to appeal, as of right, the following assignment of errors upon which they will rely in presenting the appeal petitioned for in the above cause, from the judgment of said Court of Appeals entered December 2, 1943, to the Supreme Court to review said errors, namely:

(1) The Court of Appeals erred in refusing to allow the petitioners to redeem the real estate herein at its appraised value of $6,000.00.

(2) The Court erred in approving and affirming the judgment of Judge Duffy below entered December 2, 1943.

(3) The Court erred in holding that the Debtors should have paid the $6,000.00 into Court prior to May 27, 1942.

(4) The Court erred in holding that the one year period to redeem began to run against them on May 27, 1941, and ended on May 27, 1942.

(5) The Court erred in holding that said redemption money of $6,000.00 could not be paid into Court within one year, after October 9, 1942, and also erred in holding that in paying it in on March 19, 1943, was not in time.

(6) The Court erred in not holding that within 30 days after July 10, 1941, when said judgment of $6,000.00, rendered May 27, 1941, was approved, said Respondent attacked said judgment by appealing from it to said Circuit Court of Appeals on the ground that said valuation was too low. The record shows it filed an assignment of error and a Brief of 15 pages. (R. 107 to 122.) That the Supreme Court in the Bronson case has specifically decided that this action of the Respondent stayed the execution of said judgment and amounted to a supersedeas until the appeal was decided, which was not until October 9, 1942. What was it appealing for? It follows, that if the Respondent could not enforce said judgment during said appeal it was therefore, dormant during said period and said Respondent could not afterwards claim it was not stayed. The Court erred in not following said decision of the Supreme Court and in not holding that said period

of redemption did not begin to run until October 9, 1942. It turned out that the Court of Appeals held the Respondent was wrong in so appealing. It is a maxim that no one will be allowed to take advantage of its own wrong.

(7) The Court erred in not holding that the Petitioners had the right to pay said $6,000.00 into Court within the year beginning October 9, 1942. That said sum was so paid March 19, 1943, within said year and the Court erred in refusing to allow them to redeem at said sum and in refusing to turn over "full possession and title" of said land to said Petitioners "free and clear" of all incumbrances. Said $6,000.00 having been paid into Court in time that it gave the Petitioners the right to redeem and the Court erred in not allowing them to redeem. The Creditor could not be allowed to blow hot and cold. It could not appeal and stop the execution of its judgment and at the same time have it running.

(8) The Court erred in affirming the judgment of the District Court, in ordering the real estate sold at public auction and in giving the Creditor the right to make an unrestricted bid on said real estate and also in giving it the right to bid the amount of its debt and the right to bid the $450.00 of National Farm Loan Association stock and to also receive the $843.00 of rent.

(9) The Court erred in not deducting from the debt said $450.00 and the rent in the hands of the Conciliation Commissioner of Adams County in the sum of $843.00 as a credit in favor of the Debtors on said Creditor's debt.

(10) That the evidence showed that said Creditor had kept out and did not pay to the Debtors said $450.00 in making said loan but kept the same and hence were indebted to them for the same—and the Court erred in requiring the Debtors to pay the $450.00.

(11) The Court erred in approving the judgment below, appointing Harley Somers Trustee and ordering him to sell the real estate herein at public sale and in ordering the sale of said $450.00 stock of said National Farm Loan Association. Said Creditors owed said $450.00 to the Debtors. They do not owe it a penny on said stock transaction.

(12) That the Court erred in not ordering said stock deducted from said appraised value. The Creditor had agree to allow it as such credit in final settlement of said mortgage debt.

(13) That said Court erred in allowing said Creditor to bid the whole amount of its dead debt and said stock at the sale of said real estate which would require said Debtors to pay over $12,000.00 for $6,000.00 worth of land. That would make redemption impossible and would defeat the purpose of Congress in enacting said remedial legislation.

(14) That the Court erred in ordering said Conciliation Commissioner to pay the balance of the rent in the sum of $843.00 in his hands to said Creditor. There is no law that it should collect more than the appraised value of $6,000.00. The Court had no power to require them to pay a penny more.

(15) That the Court erred in not finding as a fact that said Debtors had a commitment from a responsible bank that it would furnish money to the extent of $6,000.00, if needed, to refinance said debt and enable said Debtors to redeem their home. The Court had no power to refuse to allow them to redeem. That hence said Court should have granted said petition to redeem and erred in not so doing. That it also erred in not stating that as said $6,000.00 was paid in to Court it would turn over said

land to them "free and clear" of said mortgage debt and all other liens against said real estate. That the Court erred in not noting that said promise was made good by paying said sum of $6,000.00 into Court on March 19, 1943, and that then said Court erred in not making the above entry and in not turning said land over to them. That said $6,000.00 is still in the registry of said Court. It would not have been error to do that to save said home. It was its duty to do that to carry out the purpose of Congress in enacting said law to save American Farm Homes.

(16) The Court had no power to allow any of the reasons it set out in its opinion, to stand in the way of allowing said Debtors to redeem said land at said $6,000.00. They had the savings of a life time invested in said land, and said Court was a Court of Conscience.

(17) In making said order for the sale of said real estate at public auction said Court greatly erred in giving said Creditor the right to bid its whole dead debt including said $450.00, at said proposed sale which amounts to over $12,000.00 and which makes redemption utterly impossible in requiring them to pay $12,000.00 for $6,000.00 worth of land. The Court erred in not refusing said Creditor's petition to allow it to bid said whole debt at said sale, and it erred in not providing that after said sale, (in all cases there is no sale in reality but the Creditor simply bids in the land itself) the Debtors should still have been given a right to redeem said land within the 90 days at said $6,000.00. No money passes. Only a form. That would have been right between man and man and the American way.

(18) The Court erred in overlooking the decision of the Supreme Court of the United States in Wright v.

Union Central (December 9, 1940), 311 U. S. 273 in which it expressly held that:

> "Safeguards were provided to protect the *rights of* secured Creditors *throughout the proceedings*, to the extent of the value of the property." (Citing two recent decisions of the Supreme Court—Bartel's case, 308 U. S. 186, also the Borchard, 310 U. S. 317—in support of that statement of the law.) If that is not the law then there is no law on that point. (Italics ours.)
>
> To leave no doubt about it the Court added the following: "There is no constitutional claim of the Creditor to more than that." (Capital ours.)
>
> Then the Court was not satisfied that that should be taken as "Supreme Law of the land" and it went still further to remove all possible doubt and added:
>
> "And so long as that right is protected the Creditor certainly is in no position to insist that doubts or ambiguities in the Act be resolved in its favor and against the Debtor."

(19) The Court meant that the Debtors must be given the benefit of the doubt. The Court here did not follow that rule. It resolved the doubts against the Debtors.

Still the Court seemed to want to make it so clear "That he who runs may read" and added another admonition in "Letters of Gold" thus:

> "Rather, the act must be liberally construed to give the Debtor the FULL MEASURE of the relief AFFORDED by Congress." (Capitals ours.) Citing the recent Bartel's case and the Kalb case in support of the statement. That is as plain as the "Sermon on the Mount."

That rule applies to the Debtors' present petition to redeem at the appraised value. That great Court must have thought that some lawyer might claim it only ap-

plied in the first redemption and did not apply in case of a public sale of the land and it stated as follows:

> "Safeguards were provided to protect the rights of secured Creditors, 'THROUGHOUT THE PROCEEDINGS,'" (311 U. S. 273). (Capitals ours.)

That means this rule applies at the beginning and in the middle and at the ending—whenever the question of redemption came up. In other words the Court meant that the rule of the appraised value was not restricted but applied in all of its vigor—all of the time, from the beginning to the end. How does that rule comport with the action of the Court herein? It has ordered a public sale of the land at public auction and allowed the Creditor to bid over $12,000.00 and has required the Debtors to pay that great sum for naked, unimproved land, as shown by the record worth only $6,000.00. The Court meant the Creditor never should be allowed to collect a penny more than the value of the land. The conscience is shocked that the Court should order that they should pay any more. The Court overlooked that the Supreme Court in said Wright case also held:

> "This act provided a procedure to effectuate a broad program of rehabilitation of distressed farmers faced with the disaster of forced sales, and an oppressive burden of debt." This debt was a millstone about their necks, and instead of the Court lifting that burden it has added on another. If this decision stands the Creditor will take their land from them and deprive them of the benefits of this remedial act, and instead of saving their home it is used to lose it.

(20) Why do the Debtors make that claim here? An examination of the opinion of the Supreme Court in Wright v. Union Central (December 9, 1940), 311 U. S. 273, will show that the members of that Great Court di-

vided on that point. It appears that the minority of the judges held that the Creditor did not have the privilege "To purchase at the sale and to receive credit for the indebtedness—in satisfaction of the purchase price." But it appears, the majority of the judges held the contrary. That makes the latter the law in that case only until modified by that Court. Subsequent litigants have the right to question it, in later cases. The Debtors ask this Court and will ask the Supreme Court to reconsider that point and to modify it and rewrite the law so as to allow the Debtors to redeem after said land is bid in (not purchased in reality) by the Creditors, to still allow the Debtors to redeem at the appraised value. In bidding in the land it is not an innocent purchaser and has no right in a Court of Conscience to collect a penny more than the value of the land. The present plan allows the Creditor to bid its dead debt and thereby defeat redemption and the purpose of the Acts to save American Farm Homes. It is only a half remedy now. It should be made a whole remedy.

(21) That the Court erred in overlooking that in the Debtors' petition to redeem at $6,000.00 filed in said cause on December 8, 1942 it raised a new and additional question which had not been presented before in said proceedings namely: To the effect that said Creditor in closing the loan of $9,000.00 herein had kept out five per cent or $450.00 of the money and thereby owed said sum to them and that it agreed said sum should be deducted from said mortgage debt on final settlement. That the Debtors had paid rent for said land to the Conciliation Commissioner of Adams County for over seven years. That it is shown by the Record that after deducting taxes on said land from said rent there still remained in his hands the sum of over $843.00. That they prayed the Court to allow

said sums as a credit and be deducted from said $6,000.00. (This was refused.) The important point about this is in this: Said Creditor on December 21, 1942, appeared by Counsel to said Debtors' petition to redeem and first moved the Court to strike out said Debtors' claims on the ground that said sum of $450.00 was not a liability of said Creditor or that it did not owe it and also that said rent of $843.00 should not be credited on said debt but be ordered paid to said Bank. That action of the Creditor was not all: It also appeared to said Debtors' petition to redeem and filed an answer thereto in which it in effect filed a cross-action against said Debtors in which it affirmatively demanded an allowance or judgment in effect against said Debtors for said $450.00, and said rent of $843.00 and that the Debtors' claim for the $450.00 be denied and that said rent should be paid to the Creditor and the final order and judgment herein of February 24, 1943, from which this appeal was taken followed said answer in this: That it refused to allow said $450.00 to the Debtors and did not allow it as a credit and also refused to deduct it from said debt. That as to said balance of $843.00 of rent the Court ordered that turned over to said Creditor. Strange to say—it cited nothing in the Bankruptcy Act nor any decision of any Court, State or Federal, in support of the latter order.

(22) What does all this mean? It means that the Creditor ventured too far. In trying to get its own claim it gave the Court jurisdiction to allow the Debtors to redeem at $6,000.00. In setting up its claim for the $450.00 and the rent and in denying the Debtors' right to have it applied as a credit on the debt and in demanding an allowance and judgment for them it thereby admitted the jurisdiction of the Court as to its own claim and it follows it could not admit the jurisdiction as to its own claim in

one breath and in the next deny the same jurisdiction to the other part of the petition, namely: The demand of the Debtors to redeem the land at $6,000.00. That was in the petition.

That admission brought a new case before the Court and also a new question about the rent and the $450.00 which had not been presented or adjudicated prior to the last final judgment. The law will not allow a litigant to split a case up into parts, and admit the jurisdiction as to its own part and deny it as to its opponent's part. If the Court has jurisdiction as to one part of a case that gives it jurisdiction of every other part of it. In other words to the whole case.

Even though this happened after May 27, 1942, the Creditor by its own action had extended the period of redemption to February 24, 1943, the date the final judgment was entered. As a result of the action of the Creditor the Court had as much power to allow redemption on the above date as it had to allow the Creditor the $450.00 and the $843.00 of rent. The Creditor overreached itself. It follows the Court had jurisdiction to allow redemption and erred in not allowing it."

(23) The Court erred in not reversing said judgment because of the admission of said Respondent in its argument in its Brief in the Court of Appeals in said first appeal from said $6,000.00 to said Court it stated as follows:

> "The Appellant [The Federal Lank Bank] does not contend that the Debtors' right to redeem at the end of three years is absolutely foreclosed at midnight on the third anniversary. Clearly, this is an equitable action, and where the Debtor is able to redeem at the fixed valuation, the Court has in its discretion, the